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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/605,814      | 10/29/2003  | James Baechle        | 4092                | 2813             |

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CHICAGO, IL 60603

EXAMINER

JOHNSON, JERROLD D

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3728

DATE MAILED: 08/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/605,814

Applicant(s)

BAECHLE ET AL

Examiner

Jerrold Johnson

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

Claim 14 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 14 recites "the bottom tray sidewalls" which are not introduced until claim 19. Accordingly, this claim is interpreted as being dependent on claim 19.

***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,5,6 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Sheffer US 4,638,745.

Re claim 1, Sheffer discloses a packaging system comprising vertically stacked trays 100 shown in Figs. 3 and 4, each tray having an array of openings 101 for receiving posts, spacer sleeves (lower portion 80 of leg 10) having a hollow interior, the sleeves are for being located over openings on each tray such that the hollow interiors communicate with the openings, support posts (upper portion 90) which insert into the spacer sleeves and through the tray openings. The spacer sleeves and support posts are formed paper tubes.

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Re claim 5, the trays are formed of corrugated board and include openings. It is not known if the openings are die cut. However, the "die-cut" limitation is a product by process limitation which does not limit the structure over what is disclosed by Sheffer.

Re claim 6, there are four spacer sleeves per tray.

Re claim 9, the spacer sleeves are hollow tubes having a triangular cross-section.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 7, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheffer.

Re claim 2, Sheffer discloses that his system may be quickly assembled without the need for glue or fasteners in col. 1. However, despite that fact, it has been held that making elements integral (e.g. through fixing them together such as through glue) or separable does not render a claim patentable. See MPEP 2144. Accordingly, it would have been obvious to one of ordinary skill in the art to fix the sleeves to the trays, as making these currently separable elements integral would minimize the chance that elements could be misplaced.

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Re claim 7, Sheffer discloses four spacer sleeves per tray. It has also been held that duplication of parts does not render a claim patentable. See MPEP 2144.

Accordingly, it would have been obvious to one of ordinary skill in the art to provide additional sleeves per tray, as by doing so the load bearing capacity of the trays would be increased.

Re claim 10, Sheffer does not show surface decoration. However, the use of decoration would be considered an aesthetic design choice within the purview of one of ordinary skill in the art.

Re claim 11, Sheffer does not indicate how many trays are used in the system, but instead shows a system where any number of trays may be used. It would have been obvious to have used four trays as this number of trays is common in display units and uses floor space effectively.

Pigott et al US 5,251,753 provides extrinsic evidence of the common use of four trays.

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheffer in view of Pigott et al US 5,251,753.

Sheffer does not disclose a top cap or pallet.

Pigott shows how a packaging system comprising a plurality of trays is commonly supported on a pallet for shipping and further includes a top cap so as to protect the items placed on the top tray.

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Accordingly, it would have been obvious to one of ordinary skill in the art to provide the top cap and pallet of Pigott so as to properly prepare the packaging system for shipping.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sheffer in view of Brush US 6,267,255.

Sheffer does not disclose an outer wrap.

Outer wraps such as shrink wrap are the norm in packaging systems of this type. Brush discloses such an outer wrap.

Accordingly, it would have been obvious to one of ordinary skill in the art to provide the packaging system of Sheffer with an outer wrap such as is disclosed by Brush so as to properly protect items packaged within the system while in transport.

Claim 13 is rejected under 35 U.S.C. 102(b) as being anticipated by Lamson et al 4,673,092.

Lamson discloses a packaging system suitable for shipping and displaying products comprising a bottom tray having a bottom panel (any of panels 20), one or more upper trays with openings (through elements 18), inner posts 14 extending upward from the bottom tray for insertion through the upper tray openings, and hollow outer spacer sleeves 34 to support the upper trays and space the trays apart.

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Claims 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lamson et al 4,673,092 in view of Sheffer and Tanaka JP7276543.

Lamson does not disclose paperboard in his system.

Sheffer discloses how packaging systems may be entirely formed of paperboard. Sheffer further discloses in Fig. 4 the use upwardly extending panels from the trays, and triangular elements for fitting snugly against the bottom tray sidewalls.

Tanaka specifically discloses how the sleeves and posts set forth in the Lamson system are producible in paperboard.

Accordingly, it would have been obvious to one of ordinary skill in the art to modify the system of Lamson to have used paperboard elements as disclosed by both Sheffer and Tanaka so as to produce a system with low cost and low weight.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Jourdain US 3,741,404 shows how support posts 2 extend through multiple sleeves and trays.


Talbot US 387,267 also shows how support posts d extend through multiple sleeves D and trays A,B,C.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jerrold Johnson whose telephone number is 571-272-7141. The examiner can normally be reached on 9:30 to 6:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JDD 



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